

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VERA V. ROLAND

Claimant

VS.

U.S.D. No. 259

Respondent

Self-Insured

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Docket No. 169,654

ORDER

Respondent requests review of the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered July 27, 1995.

ISSUES

Whether the Administrative Law Judge exceeded her jurisdiction in granting psychiatric care in 1995 for a back injury suffered in May, 1991.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The jurisdiction of the Appeals Board when reviewing findings from preliminary hearings is limited statutorily. Either the disputed issue must be one specifically enumerated in K.S.A. 44-534a including (1) whether the employee suffered accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; or (4) whether certain defenses apply, or the Administrative Law Judge must have exceeded his or her jurisdiction in granting the benefits pursuant to K.S.A. 44-551, as amended by S.B. 59 (1995). In this instance respondent objects to the order for medical benefits in the form of psychological counseling for claimant from this Preliminary Hearing Order.

This matter went to Award before Special Administrative Law Judge William F. Morrissey on February 1, 1994, with appeal to the Appeals Board subsequent thereto. The Appeals Board found claimant had proven injury but had failed to prove any permanency resulted from this injury. The Appeals Board's Order of September 13, 1994, granted claimant temporary benefits and awarded future medical care upon application to and approval by the Director.

The claimant sought and obtained psychological counseling beginning in early 1995 and requests an order from the Administrative Law Judge authorizing the ongoing psychological counseling.

Respondent contends claimant's ongoing psychological problems do not stem from accidental injury which arose out of and in the course of her employment. The Appeals Board has held in prior cases that psychological counseling when alleged to result from an otherwise compensable work-related injury does not involve the issue regarding whether claimant suffered accidental injury arising out of and in the course of his or her employment. The need for ongoing psychological counseling is instead an issue regarding nature and extent of injury and/or disability and not one enumerated in K.S.A 44-534a as appealable from a preliminary hearing. An Administrative Law Judge clearly has authority through K.S.A. 44-534a to provide medical treatment from a preliminary hearing and thus has not exceeded her jurisdiction in this instance. The Appeals Board finds this issue is not properly before the Appeals Board for purpose of review from a preliminary hearing order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that respondent's application for review should be and is hereby dismissed and the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered July 27, 1995, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of October 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy J. King, Wichita, Kansas
Robert G. Martin, Wichita, Kansas
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director